

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1343

Practice of Tattooing

SPONSOR(S): Brandenburg

TIED BILLS:

IDEN./SIM. BILLS: SB 1130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Policy Committee		Cicccone	Calamas
2) Health & Family Services Policy Council			
3) Human Services Appropriations Committee			
4) Full Appropriations Council on General Government & Health Care			
5)			

SUMMARY ANALYSIS

House Bill 1343 creates several new sections of law and establishes the "Tattoo Practice and Tattoo Establishment Act."

The bill directs the Department of Health ("DOH" or "the department") to establish in consultation with the professional tattooing industry, requirements for licensure and registration of tattooists and tattoo establishments in Florida. The bill provides specific licensure criteria for a tattooist and registration criteria for an intern, an apprentice, or a guest tattooist.

The bill authorizes the department to inspect tattoo studios for compliance with certain sanitation standards and provides penalties for violations, including license revocation, suspension, and monetary fine and probation, reprimand, or renewal denial of licensure or registration.

The bill creates several new third degree felonies relating to specific acts of non compliance, and provides that a person who fails to maintain certain records commits a second degree misdemeanor. The bill authorizes the courts to initiate penalties in addition to any other punishment established in the proposal.

The bill authorizes the department to adopt rules to implement the act, and collect fees to administer the program.

The bill appears to have no direct fiscal impact on state funds. The cost of the program is off-set by the generated revenues of the program.

The bill provides an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Florida:

Current state law addresses the subject of human tattooing in three primary areas: who may perform tattooing, restrictions with regard to minors, and penalties due to non-compliance. Specifically, s. 877.04, F.S., provides that it is unlawful for any person to tattoo the body of any human being, except if the tattoo is performed by:

- A person licensed to practice medicine under ch. 458 and ch. 459, F.S.;<sup>1</sup>
- A person licensed to practice dentistry under ch. 466, F.S.;<sup>2</sup> or,
- A person under his or her general supervision as defined by the Board of Medicine.

Any person who tattoos or applies permanent make-up must either be licensed as, or work under the "general supervision" as defined in ch. 64B8-2.002, Florida Administrative Code of a medical Doctor, a Doctor of Osteopathy, a Doctor of Dental Surgery, or a doctor of Medical Dentistry. Additionally, it is unlawful for the body of a minor to be tattooed without the written notarized consent of the parent or legal guardian. Any person who violates this section is guilty of a misdemeanor of the second degree and punishable under s. 775.082 and s. 775.083, F.S.

##### Oversight of Tattoo Studios

Section 381.0098(1), F.S., establishes legislative intent relating to protecting the public's health and provides safety standards for the packaging, transport, storage, treatment and disposal of biomedical waste. Biomedical waste is defined as any solid or liquid waste which may present a threat of infection to humans, including waste products that include discarded disposable sharps,<sup>3</sup> human blood, blood products and body fluids...<sup>4</sup> A biomedical waste generator is defined as "...a facility, or person that produces or generates biomedical waste...."<sup>5</sup> The statute directs the Department of Health and the

<sup>1</sup> Chapters 459 and 459, F.S., provide for licensure of medical doctors and osteopathic doctors, respectively.

<sup>2</sup> Chapter 466, F.S., provides for licensure of dentists.

<sup>3</sup> Section 381.0098(2)(d), F.S., defines "sharps" as those biomedical wastes which as a result of their physical characteristics are capable of puncturing, lacerating, or otherwise breaking the skin when handled.

<sup>4</sup> Section 381.0098(2)(a), F.S.

<sup>5</sup> Section 381.0098(2)(b), F.S.

Department of Environmental Protection to develop an interagency agreement to ensure maximum efficiency in coordinating, administering, and regulating biomedical waste. The DOH has no authority to issue a license to a tattooist or a tattoo studio. However, the department does have authority to issue a biomedical waste-generator permit to a tattooist or a tattoo studio.

In accordance with Ch.64E-16.011, Florida Administrative Code, the department prescribes minimum sanitary practices relating to the management of biomedical waste and the regulation of biomedical waste generators. In accordance with ch. 64E-16.011(1), Florida Administrative Code, tattoo studios are considered biomedical waste generators and as such are required to obtain an annual permit from the department. These studios are inspected by department personnel at least once a year and re-inspections may be conducted when a facility is found to be in non-compliance with sanitation practices. Current law does not provide authorization for the department to inspect these establishments relating to other sanitation aspects of tattoo studios, or the licensure or registration of tattoo artists.

As a result of the department's oversight of tattoo studios as biomedical waste generators, it is estimated that there are approximately 800 permanent make-up and tattoo establishments in Florida. While the department believes that the majority of tattooists and tattoo studios function well in terms of protecting the public, procedures vary from studio to studio and there is no central location of records or core training curricula for the industry or the individual.<sup>6</sup> The American Tattooing Institute offers an on-line or mail order certification course that includes studies in skin anatomy and physiology, blood borne pathogens, OSHA standards, food and drug administration information, and body art specialist's code of ethics training.<sup>7</sup> At least one tattoo studio in Florida provides on-site training.<sup>8</sup>

#### National:

At least 38 states have implemented laws regarding tattooing and body piercing. Twenty-eight states have laws that prohibit both body piercing and tattooing on minors without parental permission.<sup>9</sup> Parental permission requirements vary among states ranging from signed notarized documentation<sup>10</sup> to explicit in-person consent of the child's parent or guardian.<sup>11</sup> The majority of states laws establish financial penalties, incarceration time, or both for violators.

The U.S. Food and Drug Administration (USFDA) and the Department of Health and Human Services, Centers for Disease Control and Prevention's (CDC) literature speak to a variety of potential risks in acquiring a tattoo on the body. Such risks include:

- Infection – Dirty needles can pass infections, such as hepatitis and HIV.
- Allergies – Allergies to different ink pigments can cause problems.
- Scarring – Unwanted scar tissue may form on an initial or removed tattoo.
- MRI complications – Though rare, swelling or burning in the tattoo area when having a magnetic resonance image can occur.

The USFDA has not approved any tattoo pigments for injection into the skin. This applies to all tattoo pigments, including those used for ultraviolet (UV) and glow-in-the dark tattoos. Many pigments used in tattoo inks are industrial-grade colors suitable for printers' ink or automobile paint. In addition, the use of henna in temporary tattoos has also not been approved by the USFDA.<sup>12</sup>

The CDC establishes that a risk of HIV transmission exists if instruments contaminated with blood are either not sterilized or disinfected or are used inappropriately between clients. The CDC recommends that single-use instruments intended to penetrate the skin be used once, then disposed of. In addition, reusable instruments or devices that penetrate the skin or contact a client's blood should be thorough

---

<sup>6</sup> Department of Children and Family Services Staff Analysis, March 2009, on file with the Committee.

<sup>7</sup> <http://www.tatsmart.com>, last researched March 21, 2009

<sup>8</sup> <http://www.addicted2tattoos.com/tattootraining>, last researched March 24, 2009

<sup>9</sup> <http://www.ncsl.org/programs/health>, National Conference of State Legislatures, last viewed March 21, 2009.

<sup>10</sup> California penal code s.652

<sup>11</sup> Montana Code Annotated s. 45-5-623

<sup>12</sup> <http://www.fda.gov/consumerupdate>, last viewed March 21, 2009

cleaned and sterilized between clients. The CDC stresses that tattooists should be educated regarding HIV transmission and take precautions to prevent this transmission in their setting.<sup>13</sup>

## **Effect of the Bill**

House Bill 1343 creates several new sections of law as Part XVII of ch. 468, F.S., and establishes the “Tattoo Practice and Tattoo Establishment Act.” The bill expands the licensing authority of the department by including tattooists and tattoo studios in the current listing of professions and facilities licensed or otherwise inspected by the department.

The effect of this bill would be to allow the department to conduct full inspections of tattoo studios, and to monitor these studios to ensure that sanitation standards are maintained at a level protective of the public’s health. The bill would require a new uniform level of education and training by tattooists, and would require that tattoo studios conduct business in a uniformly clean and sanitary environment. The bill may change the way some studios operate by specifically regulating certain studio infrastructure such as: the surface area of floors, tables and chairs to ensure sanitization; utility and bathroom facility functioning and availability; trash containment and disposal of materials, including dyes and inks used on a customer, etc. The bill adds an additional level of protection especially for minors seeking tattoos, by authorizing the department to inspect tattoo studios and their business records.

The bill establishes new licensing and registration fees and in so doing provides a revenue source that is intended to administer the program. The department would be required to develop rules to implement the program.

The penalty section of the bill (newly created s. 468.861, F.S.) establishes several new third degree felonies relating to the following acts:

- Owning, operating, or soliciting business as a tattoo studio in the state without first procuring a license, unless specifically exempted;
- Obtaining or attempting to obtain a license to operate a tattoo studio by means of fraud, misrepresentation, or concealment;
- Tattooing a minor;
- Practicing tattooing upon an impaired customer or a customer who has exuding sores, weeping dermatitis, or a contagious disease, exuding the common cold; or
- Practicing tattooing when the tattooist has exuding sores, weeping dermatitis, or a contagious disease, exuding the common cold.

The bill provides second degree misdemeanor penalties for failure to maintain required records, or who knowingly makes false entries in such records. In addition to other punishments provided in the proposal, the court may suspend or revoke the license or registration of any licensee who is found guilty of any violation in the proposal.

The bill provides an effective date of July 1, 2009.

## **B. SECTION DIRECTORY:**

Section 1. Creates Part XVII of ch. 468, F.S., consisting of sections 468.85, 468.852-859, 468.61 and 468.861, F.S., relating to establishing the “Tattoo Practice and Tattoo Establishment Act;” provides definitions; licensure requirements; exemptions; prohibited acts; licensure qualifications; licensure renewal; practice requirements for tattooists; requirements for tattoo establishments; fees; disposition of fees; department rulemaking authority; intern and apprentice tattooist program criteria; and penalties.

Section 2. Provides an effective date of July 1, 2009.

<sup>13</sup> <http://www.cdc.gov/hiv>, last viewed March 21, 2009

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

	1 <sup>st</sup> Year	2 <sup>nd</sup> Year
800 tattoo establishments @ \$150	\$120,000	\$120,000
Average 2 licensed or registered tattooists 1,600 @ \$50	\$ 80,000	\$ 80,000
25 apprentice or guest tattooists @ \$25	<u>\$ 625</u>	<u>\$ 625</u>
<b>Total Estimated Revenue</b>	<b>\$200,625</b>	<b>\$200,625</b>

#### 2. Expenditures:

	1 <sup>st</sup> Year	2 <sup>nd</sup> Year (Annualized/Recurr.)
<b>Salaries</b>		
Inspections of 800 establishments for		
1 ESII (10% over base + travel) @ 2 hr/inspection and travel @ \$24/hr		
Reinspection of 20% of 800 establishments For 1 ESII @ 2 hr/inspection and travel @ \$24/hr	\$ 38,400	\$ 38,400
15% 2 <sup>nd</sup> year		
Complaint Investigation of 15% of 800 Establishments @ 1.5 hr/inspection + travel	\$ 7,680	\$ 6,528
15% 2 <sup>nd</sup> year	\$ 3,137	\$ 2,667
Support staff at CHD processing 3200 applications, Issuing 3200 licenses, and registrations hrs @ 11.31/hr for 1600 hours		
	\$ 18,096	\$ 18,096
Training developed provided by 1 Env. Man and 1 EES III to CHD inspectors at 10 sites, 4 hrs/site + 40 hrs development = 80 hrs @ 47.47/hr		
5 sites 2 <sup>nd</sup> year	\$ 3,797	\$ 1,898
Training Travel 4250 airfare + \$1200 lodging + \$740 meals + \$800 per diem x 2 + \$400 car rental		
	\$ 6,380	\$ 3,190
Rule Promulgation:		
1 Env. Admin. @27.26/hr x 90 hrs	\$ 2,453	
1 Env. Man @ 24.27/hr x 45 hrs	\$ 1,092	
1 ES III @ 23.20/hr x 30 hrs	\$ 696	
1 Support @ 11.31/hr x 20	\$ 226	
FAW Notices	\$ 1,000	
<b>Total Estimated Expenditures</b>	<b>\$ 82,957</b>	<b>\$ 70,779</b>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Currently, individual tattooists do not pay a license fee. The bill requires each tattoo establishment to pay an annual fee not to exceed \$500. Each licensed tattooist or registered intern tattooist will be required to pay an annual license fee not to exceed \$250. Each apprentice tattooist or guest tattooist is required to pay an annual registration fee not to exceed \$150. Apprentice tattooist or license reactivation fees are not addressed.

It is possible that newly licensed tattooists or tattoo studios will experience an increase in business through the reduction of unlicensed tattooists.

**D. FISCAL COMMENTS:**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill provides rule making authority for the department.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**